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11 Attorneys for Defendant Zulily, Inc.
12 erroneously sued as Zulily.com

13
14 **UNITED STATES DISTRICT COURT**
15
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 UNITED FABRICS INTERNATIONAL,
19 INC., a California corporation,

20 Plaintiff,

21 vs.

22 NOA, a business entity of form unknown;
23 WAVE FASHION, INC., a Texas
24 Corporation; ZULILY.COM, a Washington
25 Corporation; HEART & ROSES USA, a
26 business entity of form unknown; and
27 DOES 1-10,
28

Defendants.

Case No. 15-cv-02637 BRO (AGR)

**DEFENDANT ZULILY, INC.
ERRONEOUSLY SUED AS
ZULILY.COM'S ANSWER TO
COMPLAINT**

JURY TRIAL DEMANDED

Complaint Filed: April 9, 2015
Trial Date: None Set

CALL &
JENSEN
EST. 1981

1 Defendant Zulily, Inc. erroneously sued as Zulily.com (“Answering Defendant”)
 2 hereby answers Plaintiff United Fabric International, Inc.’s Complaint (“Complaint”).
 3 Each numbered paragraph in this Answer responds to the allegations in the
 4 corresponding numbered paragraph of the Complaint.

5
 6 **ANSWER TO ALLEGATIONS REGARDING**
 7 **JURISDICTION AND VENUE**

8 1. Answering Defendant admits that the causes of action alleged in Plaintiff’s
 9 complaint arise under the Copyright Act.

10 2. Answering Defendant admits that this Court has federal question
 11 jurisdiction.

12 3. Answering Defendant denies the allegations.

13 **ANSWER TO ALLEGATIONS REGARDING PARTIES**

14 4. Answering Defendant lacks knowledge or information sufficient to form a
 15 belief as to the truth of the allegations, and on that basis denies them.

16 5. Answering Defendant lacks knowledge or information sufficient to form a
 17 belief as to the truth of the allegations, and on that basis denies them.

18 6. Answering Defendant lacks knowledge or information sufficient to form a
 19 belief as to the truth of the allegations, and on that basis denies them.

20 7. Answering Defendant admits that Zulily, Inc. is a Washington corporation
 21 with its principle place of business in Seattle, Washington. Answering Defendant denies
 22 the remaining allegations.

23 8. Answering Defendant lacks knowledge or information sufficient to form a
 24 belief as to the truth of the allegations, and on that basis denies them.

25 9. Answering Defendant lacks knowledge or information sufficient to form a
 26 belief as to the truth of the allegations, and on that basis denies them.

27 10. Answering Defendant denies the allegations.
 28

ANSWER TO ALLEGATIONS REGARDING
CLAIM RELATED TO SPIKE

11. Answering Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

12. Answering Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

13. Answering Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

14. Answering Defendant denies the allegations.

15. Answering Defendant denies the allegations.

16. Answering Defendant denies the allegations.

ANSWER TO FIRST CLAIM FOR RELIEF

(Copyright Infringement – Against All Defendants)

17. Answering Defendant repeats and re-alleges the responses contained in the preceding paragraphs to the same extent the Complaint repeats and re-alleges the allegations in the preceding paragraphs.

18. Answering Defendant denies the allegations.

19. Answering Defendant denies the allegations.

20. Answering Defendant denies the allegations.

21. Answering Defendant denies the allegations.

22. Answering Defendant denies the allegations.

23. Answering Defendant denies the allegations.

24. Answering Defendant denies the allegations.

ANSWER TO SECOND CLAIM FOR RELIEF

(Contributory Copyright Infringement – Against All Defendants)

25. Answering Defendant repeats and re-alleges the responses contained in the preceding paragraphs to the same extent the Complaint repeats and re-alleges the allegations in the preceding paragraphs.

26. Answering Defendant denies the allegations.
27. Answering Defendant denies the allegations.
28. Answering Defendant denies the allegations.
29. Answering Defendant denies the allegations.
30. Answering Defendant denies the allegations.

AFFIRMATIVE DEFENSES

Answering Defendant alleges the following affirmative defenses based on the facts and information currently in Answering Defendant's possession. Answering Defendant reserves the right to amend this Answer to allege additional defenses after an opportunity for discovery.

FIRST AFFIRMATIVE DEFENSE

1. The Complaint, and each and every claim for relief therein, fails to allege facts sufficient to state a claim for relief against Defendants.

SECOND AFFIRMATIVE DEFENSE

2. The Complaint, and each and every claim for relief therein, is barred by the applicable statute of limitations, including Section 507 of the Copyright Act.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claims are barred by the fact that the copyrighted works referenced in the Complaint are not original works of authorship and thus are not entitled to copyright protection.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's claims are barred by the fact that the Plaintiff is not the author of the works of authorship referenced in the Complaint and thus lacks standing to sue.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff's claims are barred by the doctrines of release, waiver, and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff's claims are barred by the doctrine of acquiescence.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff's claims are barred by its failure to mitigate damages.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff has not sustained any injury or damage as a result of any act or conduct of Defendants and Defendants have at all times acted with innocent intent.

TENTH AFFIRMATIVE DEFENSE

10. Upon information and belief, Plaintiff's claims are barred because Plaintiff has failed to join indispensable parties.

ELEVENTH AFFIRMATIVE DEFENSE

11. Upon information and belief, Plaintiff's claims are barred and recovery is barred or limited by the doctrine of consent.

TWELFTH AFFIRMATIVE DEFENSE

12. Upon information and belief, Defendants allege that other persons or entities, the true names and capacities of whom and which Defendants are ignorant,

1 were in some manner responsible for, or otherwise at fault for the allegations alleged in
2 Plaintiff's Complaint.

3
4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 13. Plaintiff's claims are barred or limited by the scenes a faire and/or
6 merger doctrine.

7
8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 14. Any purported damages sought by the Plaintiff in the form of Defendants'
10 profits are limited by the apportionment theory based on the percentage of profits
11 attributable to the alleged infringement of the allegedly copyrighted work.

12
13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 15. Assuming, arguendo, that the products sold by Answering Defendants
15 contain any elements from Plaintiff's Subject Designs, Plaintiff's claims are barred
16 because those elements are not protectable under copyright law, do not constitute
17 original expression, and/or the use of those elements is de minimis.

18
19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 16. Plaintiff's claims are barred to the extent that Plaintiff engaged in
21 fraudulent conduct, which a reasonable opportunity for discovery may provide
22 evidentiary support.

23
24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 17. Plaintiff's claims are barred in that Plaintiff failed to take reasonable steps
26 to protect its purported intellectual property rights.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. To the extent Plaintiff seeks to recover Answering Defendants' profits from downstream sales of allegedly infringing copies, Plaintiff's claims are barred by the first sale doctrine.

PRAYER FOR RELIEF

Wherefore, Answering Defendant prays for relief as follows:

1. That judgment be entered in favor of Answering Defendant and against Plaintiff;
2. That Answering Defendant be awarded the costs of suit, including reasonable attorney's fees; and
3. For such other and further relief as the Court deems just and proper.

Dated: May 6, 2015

CALL & JENSEN
A Professional Corporation
Scott P. Shaw
Samuel G. Brooks

By: /s/Samuel G. Brooks
Samuel G. Brooks

Attorneys for Defendant Zulily, Inc. erroneously
sued as Zulily.com

JURY DEMAND

Answering Defendant demands a trial by jury on all issues so triable.

Dated: May 6, 2015

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By: /s/Samuel G. Brooks
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